

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
NO. 5:19-CR-00022(4)-MOC-DSC

UNITED STATES OF AMERICA

v.

ROBERT CANNON HAYES

**DEFENDANT'S
SENTENCING MEMORANDUM**

Defendant Robert Cannon "Robin" Hayes, through counsel and pursuant to 18 U.S.C. § 3553(a) and Fed. R. Crim. P. 32(i)(1)(C), respectfully submits this Memorandum with regard to sentencing.

INTRODUCTION

Robin Hayes is a loving husband, father, and grandfather; a selfless friend; and a lifelong public servant. He has lived a life in quiet service of others, and he has achieved much through hard work and compassion.

The Sentencing Guidelines for the offense in this case yield a sentencing range of zero to six months. ECF No. 106, Presentence Investigation Report ¶ 49. That range is within Zone A of the Sentencing Table, so "a sentence of imprisonment is not required." *Id.* The Plea Agreement also provides that zero to six months is the appropriate range, and that the government will recommend a sentence at the low end of the range. ECF No. 70, Plea Agreement ¶ 8(b)-(c). Accordingly, and based on the factors prescribed by Section 3553(a), Mr. Hayes respectfully submits that a sentence of probation would be sufficient but not greater than necessary to serve the purposes of sentencing.

HISTORY AND CHARACTERISTICS OF THE DEFENDANT

Mr. Hayes is, above all else, a family man. He is a loving husband to his wife of fifty-two years, Barbara; a devoted father to his two children, Winslow and Bob; and a beloved grandfather to his seven grandchildren.

Family lies at the center of all he does, and he is at the center of his family's lives. His daughter, Winslow, lives next door. His son, Bob, is his best friend and business partner. He taught his grandchildren how to hunt, how to clean a fish, and (for those old enough) how to drive a car. He is at virtually every grandchild's football game, basketball game, baseball game, and school play. As his daughter has said, he is his family's "moral compass" and its "spiritual leader." No matter what professional or personal obligations demand his attention, he prioritizes being there for his family.

"Family" to Robin Hayes, however, means much more than just blood relatives. As each would attest, Mr. Hayes's "family" encompasses friends, neighbors, colleagues, church members, community members, and virtually anyone who crosses his path. He has opened his heart and his home to neighborhood kids, exchange students, veterans, former staffers, and those who would be mere acquaintances to anyone else.

"Being there for family" also means more than just physical presence. To Mr. Hayes, it means doing anything and everything he can to help those in his life. Mr. Hayes gives generously—of himself, his time, his attention, and his resources—without any expectation of recognition or return. He has given the clothes off his back and the food off his table. He has been there to counsel and console friends through loss, grief, anger, and doubt. He has been there to support family and friends

confronting illness, job loss, spiritual upheaval, and economic uncertainty. As one of his former staffers wrote:

I find Robin's kindness to be distinct. He gives so much and never asks for anything in return. . . . Robin is a genuinely selfless friend. He has a huge heart and a charitable soul. He makes extraordinary kindness feel routine.

These qualities inspire all who encounter him to hold him close. As one friend wrote: "I consider [Robin Hayes] one of my very best friends, but so does everyone who knows him."

Mr. Hayes has lived a life guided by faith, compassion, and quiet service of others. After graduating from Concord High School, he attended Duke University. Following graduation in 1967, he returned to the family company—Cannon Mills in Kannapolis—where he had worked summers. He worked his way through every department, ultimately making it to the front office in 1971, just a few months before his grandfather, the company's chairman, passed away.

After the loss of his grandfather, Mr. Hayes left the family business and became a sales manager for a company out of Chicago. After a few years in that position, he founded a construction and landscaping business in Cabarrus County. He built that company from a small, two-bulldozer operation to a successful enterprise employing approximately 25 people.

In 1978, Mr. Hayes began what would be over four decades of public service, as a member of the Concord City Council. While on the Council, he discovered a passion for prison ministry. A dedicated volunteer and later chair of the state board of Prison Fellowship, Mr. Hayes has devoted substantial time and resources to

providing housing, employment, and support to former inmates as they transition back into their communities.

After leaving the Council, he and Barbara took their young family to live a tough winter on the north shores of Alaska, beyond the Arctic Circle near Prudhoe Bay. Mr. Hayes worked for a local fisherman, and Barbara homeschooled Bob and Winslow.

In 1992, Mr. Hayes was elected to the North Carolina House of Representatives. During his two terms, from 1993 to 1996, Mr. Hayes worked hard to support his constituents and colleagues on both sides of the aisle, serving as the first Republican majority whip in North Carolina history and also serving on the board of Governor Jim Hunt's Smart Start initiative. In 1996, he served as the Republican Party's nominee for governor, but he lost to incumbent Hunt.

In 1998, Mr. Hayes was elected to Congress, where he represented North Carolina's 8th District in the House of Representatives. Among the many issues on which he advocated for his constituents—including agriculture and transportation—particularly close to his heart were the soldiers and families of the 82nd Airborne and Special Operations forces at Fort Bragg. As a member of the House Armed Services Committee, helping steer the country's response to the attacks of September 11, 2001, Mr. Hayes dedicated tremendous energy and attention to ensuring that military men and women were well equipped, cared for, and supported at home and abroad. A regular on the manifest to visit troops overseas and someone who welcomed veterans

in need into his home, Mr. Hayes received the National Military Family Association's Support of Military Families Award in 2003. One retired general stated it best:

[I]n my forty years of service to our Nation, I have yet to meet a man of character, endurance and integrity as that of Robin Hayes. . . . [B]oth myself and my extended Family of thousands of Marines and their families, have had our lives so vastly supported and improved because of Robin Hayes.

After five terms in Congress, Mr. Hayes was asked to serve as Chair of the North Carolina Republican Party in 2011. He retired from that position in 2013 but was called out of retirement in 2016 to help the party recover from several years of inadequate funding. Mr. Hayes served as an unpaid volunteer.

In 2017, the party elected Mr. Hayes to a second two-year term, which he served until 2019. During his second term as Chair, Mr. Hayes also served as the Chair of the National Council of Republican Party Chairs, coordinating the efforts of leaders in all 50 states.

After this case was filed, Mr. Hayes resigned from his position as party chair. He also stepped down from the board of directors of the Cannon Foundation—the charitable organization founded by his grandfather to support higher education, advance healthcare, combat violence and poverty, and promote community. But he has not stopped serving. Mr. Hayes continues his volunteer work, striving to secure funding for three facilities that provide substance-abuse recovery services—Bridge to Recovery in Monroe, Brunswick Christian Recovery Center in Ash, and Freedom Farm Ministries in Boone. He also is working with the Concord First Assembly Church to provide support, direction, guidance, and housing for former inmates

transitioning back into the community, as well as with the Cabarrus Cooperative Christian Ministry to secure funding for persons displaced by the COVID-19 pandemic.

Even in retirement, Mr. Hayes continues to live his life the way he always has: in quiet service of others. In the words of one, “[t]his is Robin in his most genuine form—a man of integrity, compassion and faith, who consistently strives to be a better version of himself.”

NATURE AND CIRCUMSTANCES OF THE OFFENSE

Mr. Hayes will regret lying to the FBI for the rest of his life. Regarding the nature and circumstances of the offense, counsel respectfully observes that its impact on the FBI’s investigation was minimal. The FBI knew the answers to its questions, because it had them on tape. Mr. Hayes, however, has accepted responsibility and cooperated with the government.¹ He deeply regrets that his actions were contrary to the principles by which he has lived his life and which he and Barbara have attempted to instill in their children and grandchildren.

SENTENCING FACTORS

Mr. Hayes does not need to be deterred from further criminal activity. He has fully accepted responsibility for his offense, he will celebrate his 75th birthday this summer, and his life both before and since his arrest has demonstrated that his actions here were aberrant and out of character. He will not repeat them.

¹ Mr. Hayes was under subpoena to testify at the trial of his co-defendants, and he prepared earnestly for the possibility he would be called.

Moreover, regardless of any sentence this Court will impose, Mr. Hayes's prosecution and guilty plea have exacted profound penalties that will live with him for the rest of his life. He had to resign as the leader of the party he served for decades. He had to step down after over thirty years on the board of directors of the Cannon Foundation—an organization founded by his grandfather and previously led by his mother. An avid lifelong hunter, who cherished hunting with his children and grandchildren, he now is a felon prohibited from possessing a firearm. And he has experienced a very public fall from grace. No separate punishment would exceed the gravity of those consequences of his conviction, but he has acknowledged his wrongdoing and accepted them.

Likewise, there is no need to protect the public from Mr. Hayes. His offense arose from his position at the helm of the North Carolina Republican Party, a position he no longer holds. What is more, Mr. Hayes has never been a risk to the community, but a credit to it. As reflected in the numerous letters of support by those who have known him as a man of kindness, compassion, and generosity, Mr. Hayes has lived a life of service. As one person wrote: "In the depths of his soul, he is a compassionate worker who simply wants to make a positive difference in the lives of others."

Taken individually, Mr. Hayes's daily acts are unremarkable except to those they impact directly. But whether he is bringing watermelons to the local high school football practice, driving students with the Fellowship of Christian Athletes to their retreats at Black Mountain, consoling a former colleague whose wife is ill, helping

facilitate treatment for someone at a local hospital, or delivering Christmas gifts to people in need, Mr. Hayes leaves his community better for his engagement.

Mr. Hayes does not need rehabilitative services in order to contribute to society. He does not require vocational training, having retired from a long career in business and public office. He does not need healthcare, being in good health for his age and in good spirits. And, far from needing substance-abuse treatment himself, he actually is striving to expand access to such treatment at recovery centers across North Carolina.

On the other hand, the health crisis caused by the COVID-19 pandemic further counsels against incarceration. Mr. Hayes is healthy, but he will turn 75 on August 14. He faces a far greater risk than most people of serious complications from the coronavirus. As the CDC recommends, keeping him safely distant from others is a high priority, and that would be impossible in a custodial setting.²

² See generally Ctrs. for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Take Extra Precautions, Older Adults*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited June 4, 2020) (advising that adults over the age of 65 are at greater risk of developing serious complications from COVID-19, have constituted eight out of ten COVID-19 deaths in the United States, and should “stay home if possible” and “stay 6 feet away” from others); Ctrs. for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://bit.ly/2M9IF6a> (last visited June 4, 2020) (recognizing that correctional and detention facilities present “unique challenges for control of COVID-19 transmission,” due to the fact that individuals “live, work, eat, study, and recreate within congregate environments”).

COVID-19 has spread rapidly through jail and prison populations.³ Courts, public officials, and law enforcement leaders across the country have sought to reduce prison populations, release at-risk inmates, and divert detainees to non-incarceration options in order to curb the spread of the virus and protect inmates and officers. The same is warranted here. No prison sentence should be a death sentence, and certainly not one at the very lowest end of the Sentencing Table. Accordingly, the current pandemic further militates in favor of probation.

Finally, Section 3553(a) directs the Court to fashion a sentence that avoids unwarranted sentencing disparities between the defendant and similarly situated defendants. This factor, too, counsels for a probationary sentence. Mr. Hayes's guideline range is the lowest available—zero to six months—based on an offense level of 4 and a criminal history category of I. Before his arrest at age 73, Mr. Hayes had no criminal history at all, and he already has successfully served well over a year under supervision of the probation office. Consequently, even before accounting for his cooperation with the government, sentencing Mr. Hayes to any period of

³ Through June 22, 2020, 6,388 federal inmates and 689 BOP staff have been confirmed infected, and 88 have died. Fed. Bureau of Prisons, *BOP: COVID-19 Update*, <https://www.bop.gov/coronavirus/> (last visited June 22, 2020). Widespread testing is rare, but of inmates tested, over 70% have the virus. Michael Balsamo, *Over 70% of Tested Inmates in Federal Prisons have COVID-19*, AP News (Apr. 29, 2020), <https://bit.ly/2AiMjrF>. In North Carolina, FCI Butner ordered mass testing for all inmates in its low-security prison, after six inmates died in just eight days and the facility suffered the first death of a BOP guard in the nation. Dan Kane, *Butner Federal Prison Begins Mass COVID Testing After Six Inmates Die in Eight Days*, RALEIGH NEWS & OBSERVER (June 3, 2020); Dan Kane, *Correctional Officer at Federal Prison in Butner, NC, Dies of COVID-19*, RALEIGH NEWS & OBSERVER (June 3, 2020). At Butner alone, 651 inmates and staff have confirmed active cases—to say nothing of unconfirmed or recovered cases—and 22 have died. *Supra BOP: COVID-19 Update*.

incarceration would be disproportionate to the overwhelming majority of similarly situated defendants.⁴

CONCLUSION

For the foregoing reasons, Mr. Hayes respectfully submits that a term of probation would be sufficient but not greater than necessary to serve the purposes of sentencing.

This the 23rd day of June, 2020.

/s/ Kearns Davis
Kearns Davis
N.C. State Bar No. 22014
kdavis@brookspierce.com

/s/ Daniel Adams
Daniel Adams
N.C. State Bar No. 51806
dadams@brookspierce.com

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
2000 Renaissance Plaza
230 North Elm Street (27401)
Post Office Box 26000 (27400)
Greensboro, NC 27420-6000
Telephone: (336) 373-8850
Facsimile: (336) 378-1001

⁴ According to data compiled by the United States Sentencing Commission, of the 12,964 defendants sentenced in fiscal 2019 with a criminal history category of I and an offense level in Zone A (*i.e.*, 0-8), 90% of them received no prison time. Of the 249 individuals in that group who were 61 or older, 92.4% received no prison time. *See* U.S. Sent'g Comm'n, Individual Offender Datafiles, Fiscal Year 2019, *available at* <https://www.ussc.gov/sites/default/files/zip/opafy19nid.zip>.